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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TINIKA ROBINSON, individually and) Case No.
on behalf of all others similarly situated,)

Plaintiff,

vs.

WESTERN DENTAL SERVICES,
INC.,
Defendant.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

1. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
2. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227 ET
SEQ.]
3. VIOLATION OF UNFAIR
COMPETITION LAW
(CAL. BUSINESS &
PROFESSIONS CODE
§§ 17200 ET SEQ.)

DEMAND FOR JURY TRIAL

1 Plaintiff TINIKA ROBINSON (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this class action Complaint against Defendant Western
6 Dental Services, Inc. (hereinafter “Defendant”) to stop Defendant’s practice of
7 charging its customers extra fees that they do not owe in violation of Unfair
8 Competition Law, California Business & Professions Code §§17200 *et seq.*
9 (“UCL”).

10 2. In addition, Plaintiff brings this class action against Defendant for
11 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular
12 telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227
13 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

14 3. Defendant is a corporation that provides dental services to consumers.

15 4. Defendant sets up automatic payments whereby Defendant
16 automatically deducts payments from its customers’ bank accounts in order to pay
17 off debts to Defendant.

18 5. However, Defendant stops withdrawing automatic payments charges
19 its customers with late fees.

20 6. Plaintiff and similarly situated consumers were charged these late
21 fees.

22 7. Defendant’s practice of charging its customers with late these fees has
23 caused Plaintiff and similarly situated consumers to pay Defendant money that they
24 do not owe for nothing in return. In so doing, Defendant has violated California
25 consumer protection law.

26 8. In addition, in order to collect on these illegal fees Defendant calls
27 its customers without their consent using an “automatic telephone dialing system”
28 and in violation of the Telephone Consumer Protection Act.

JURISDICTION & VENUE

9. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in California state. The total claims of the proposed Class members, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

10. Venue is proper in the United States District Court for the CENTRAL District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the state of California and the CENTRAL District of California.

PARTIES

11. Plaintiff, Tinika Robinson (“Plaintiff”), is a natural person residing in Woodland Hills, California and is a “person” as defined by 47 U.S.C. § 153 (10).

12. Defendant, Western Dental Services, Inc. (“Defendant”), is a company that provides dental services and is a “person” as defined by 47 U.S.C. § 153 (10).

13. Plaintiff is informed and believes, and thereon alleges, that at all time relevant, Defendant’s services are governed by the controlling law in the state in which they do business and from which the services, and the allegedly unlawful acts originated, which is California.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or is attributable to, Defendants and/or its employees, agents, and/or third parties acting on its behalf, each acting as the agent for the other, with legal authority to act on the other’s

1 behalf. The acts of any and all of Defendant's employees, agents, and/or third
2 parties acting on its behalf, were in accordance with, and represent, the official
3 policy of Defendants.

4 15. Plaintiff is informed and believes, and thereon alleges, that said
5 Defendants is in some manner intentionally, negligently, or otherwise responsible
6 for the acts, omissions, occurrences, and transactions of each and all its employees,
7 agents, and/or third parties acting on its behalf, in proximately causing the damages
8 herein alleged.

9 16. At all relevant times, Defendants ratified each and every act or
10 omission complained of herein. At all relevant times, Defendants, aided and abetted
11 the acts and omissions as alleged herein.

12
13 **FACTUAL ALLEGATIONS**

14 17. Beginning in and around February 2015, Defendant contacted
15 Plaintiff on her cellular telephone, ending in -9063, in an attempt to collect an
16 alleged outstanding debt.

17 18. Plaintiff was willing to make the appropriate payments on this debt
18 and set up an autopay system with the Defendant whereby the Defendant would
19 automatically deduct payments from Plaintiff's bank account towards the payment
20 of the debt.

21 19. The Defendant stopped taking payments out and started charging
22 Plaintiff late fees.

23 20. Upon learning this, Plaintiff felt ripped off and cheated by Defendant.

24 21. Plaintiff is informed, believes, and thereupon alleges that such
25 representations were part of a common scheme to mislead consumers and charge
26 them additional fees.

27 22. Defendant used an "automatic telephone dialing system", as defined
28 by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the

1 debt allegedly owed

2 23. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 24. Defendant's calls were placed to telephone number assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming calls
6 pursuant to 47 U.S.C. § 227(b)(1).

7 25. Plaintiff told Defendant to stop calling her on at least one occasion.
8 Accordingly, Defendant never received Plaintiff's "prior express consent" to
9 receive calls using an automatic telephone dialing system or an artificial or
10 prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

11 **UCL-CLASS ALLEGATIONS**

12 26. Plaintiff brings this action, on behalf of herself and all others similarly
13 situated, and thus, seeks class certification under Federal Rule of Civil Procedure
14 23.

15 27. The UCL class Plaintiff seeks to represent is defined as follows:

16 All consumers, who, between the applicable statute of
17 limitations and the present, were charged late fees from
18 Defendant as a result of Defendant's failure to withdraw
payments that it was authorized to take.

19 28. As used herein, the term "UCL Class Members" shall mean and refer
20 to the members of the UCL Class described above.

21 29. Excluded from the UCL Class is Defendant, its affiliates, employees,
22 agents, and attorneys, and the Court.

23 30. Plaintiff reserves the right to amend the Class, and to add additional
24 subclasses, if discovery and further investigation reveals such action is warranted.

25 31. Upon information and belief, the proposed UCL class is composed of
26 thousands of persons. The members of the UCL class are so numerous that joinder
27 of all members would be unfeasible and impractical.
28

1 32. No violations alleged in this complaint are contingent on any
2 individualized interaction of any kind between UCL class members and Defendant.

3 33. Rather, all claims in this matter arise from the identical charges to
4 Class Members.

5 34. There are common questions of law and fact as to the Class Members
6 that predominate over questions affecting only individual members, including but
7 not limited to:

- 8 • Whether Defendants engaged in unlawful, unfair, or deceptive
9 business practices in charging late fees to Plaintiff and other
10 UCL Class Members;
- 11 • Whether Defendants profited from the late fees;
- 12 • Whether Defendants violated California Bus. & Prof. Code §
13 17200, et seq.,;
- 14 • Whether Plaintiff and UCL Class Members are entitled to
15 equitable and/or injunctive relief;
- 16 • Whether Defendant's unlawful, unfair, and/or deceptive
17 practices harmed Plaintiff and UCL Class Members; and
- 18 • The method of calculation and extent of damages for Plaintiff
19 and UCL Class Members.
20

21 Plaintiff is a member of the class she seeks to represent

22 35. The claims of Plaintiff are not only typical of all UCL class members,
23 they are identical.

24 36. All claims of Plaintiff and the UCL class are based on the exact same
25 legal theories.

26 37. Plaintiff has no interest antagonistic to, or in conflict with, the UCL
27 class.

28 38. Plaintiff is qualified to, and will, fairly and adequately protect the

1 interests of each UCL Class Member, because Plaintiff bought UCL Class Products
2 from Defendants during the UCL Class Period. Defendant's unlawful, unfair and/or
3 fraudulent actions concerns the same business practices described herein
4 irrespective of where they occurred or were experienced. Plaintiff's claims are
5 typical of all UCL Class Members as demonstrated herein.

6 39. Plaintiff will thoroughly and adequately protect the interests of the
7 UCL class, having retained qualified and competent legal counsel to represent
8 himself and the UCL class.

9 40. Common questions will predominate, and there will be no unusual
10 manageability issues.

11 **TCPA-CLASS ALLEGATIONS**

12 41. Plaintiff brings this action individually and on behalf of all others
13 similarly situated, as a member of the proposed class (hereafter "The TCPA Class")
14 defined as follows:

15
16 All persons within the United States who received any
17 collection telephone calls from Defendant to said
18 person's cellular telephone made through the use of any
19 automatic telephone dialing system or an artificial or
20 prerecorded voice and such person had not previously
21 consented to receiving such calls within the four years
22 prior to the filing of this Complaint

23 42. Plaintiff represents, and is a member of, The TCPA Class, consisting
24 of All persons within the United States who received any collection telephone calls
25 from Defendant to said person's cellular telephone made through the use of any
26 automatic telephone dialing system or an artificial or prerecorded voice and such
27 person had not previously not provided their cellular telephone number to
28 Defendant within the four years prior to the filing of this Complaint.

43. Defendant, its employees and agents are excluded from The TCPA

1 Class. Plaintiff does not know the number of members in The TCPA Class, but
2 believes the TCPA Class members number in the thousands, if not more. Thus,
3 this matter should be certified as a Class Action to assist in the expeditious litigation
4 of the matter.

5 44. The TCPA Class is so numerous that the individual joinder of all of
6 its members is impractical. While the exact number and identities of The TCPA
7 Class members are unknown to Plaintiff at this time and can only be ascertained
8 through appropriate discovery, Plaintiff is informed and believes and thereon
9 alleges that The TCPA Class includes thousands of members. Plaintiff alleges that
10 The TCPA Class members may be ascertained by the records maintained by
11 Defendant.

12 45. Plaintiff and members of The TCPA Class were harmed by the acts of
13 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
14 and TCPA Class members via their cellular telephones thereby causing Plaintiff
15 and Class members to incur certain charges or reduced telephone time for which
16 Plaintiff and TCPA Class members had previously paid by having to retrieve or
17 administer messages left by Defendant during those illegal calls, and invading the
18 privacy of said Plaintiff and TCPA Class members.

19 46. Common questions of fact and law exist as to all members of The
20 TCPA Class which predominate over any questions affecting only individual
21 members of The TCPA Class. These common legal and factual questions, which
22 do not vary between TCPA Class members, and which may be determined without
23 reference to the individual circumstances of any TCPA Class members, include,
24 but are not limited to, the following:

- 25 a. Whether, within the four years prior to the filing of this TCPA
26 Complaint, Defendant made any collection call (other than a
27 call made for emergency purposes or made with the prior
28 express consent of the called party) to a TCPA Class member

1 using any automatic telephone dialing system or any artificial
2 or prerecorded voice to any telephone number assigned to a
3 cellular telephone service;

4 b. Whether Plaintiff and the TCPA Class members were damages
5 thereby, and the extent of damages for such violation; and

6 c. Whether Defendant should be enjoined from engaging in such
7 conduct in the future.

8 47. As a person that received numerous collection calls from Defendant
9 using an automatic telephone dialing system or an artificial or prerecorded voice,
10 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
11 typical of The TCPA Class.

12 48. Plaintiff will fairly and adequately protect the interests of the members
13 of The TCPA Class. Plaintiff has retained attorneys experienced in the prosecution
14 of TCPA class actions.

15 49. A TCPA class action is superior to other available methods of fair and
16 efficient adjudication of this controversy, since individual litigation of the claims
17 of all TCPA Class members is impracticable. Even if every TCPA Class member
18 could afford individual litigation, the court system could not. It would be unduly
19 burdensome to the courts in which individual litigation of numerous issues would
20 proceed. Individualized litigation would also present the potential for varying,
21 inconsistent, or contradictory judgments and would magnify the delay and expense
22 to all parties and to the court system resulting from multiple trials of the same
23 complex factual issues. By contrast, the conduct of this action as a class action
24 presents fewer management difficulties, conserves the resources of the parties and
25 of the court system, and protects the rights of each TCPA Class member.

26 50. The prosecution of separate actions by individual TCPA Class
27 members would create a risk of adjudications with respect to them that would, as a
28 practical matter, be dispositive of the interests of the other TCPA Class members

1 not parties to such adjudications or that would substantially impair or impede the
2 ability of such non-party TCPA Class members to protect their interests.

3 51. Defendant has acted or refused to act in respects generally applicable
4 to The TCPA Class, thereby making appropriate final and injunctive relief with
5 regard to the members of the TCPA Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **Negligent Violations of the Telephone Consumer Protection Act**

8 **47 U.S.C. §227 et seq.**

9 (TCPA Class Members against Defendant)

10 52. Plaintiff repeats and incorporates by reference into this cause of
11 action the allegations set forth above at Paragraphs 1-51.

12 53. The foregoing acts and omissions of Defendant constitute numerous
13 and multiple negligent violations of the TCPA, including but not limited to each
14 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

15 54. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
16 *seq.*, Plaintiff and the TCPA Class Members are entitled an award of \$500.00 in
17 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
18 *227(b)(3)(B)*.

19 55. Plaintiff and the TCPA Class members are also entitled to and seek
20 injunctive relief prohibiting such conduct in the future.

21 ///

22 **SECOND CAUSE OF ACTION**

23 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
24 **Act**

25 **47 U.S.C. §227 et seq.**

26 (TCPA Class Members against Defendant)

27 56. Plaintiff repeats and incorporates by reference into this cause of
28 action the allegations set forth above at Paragraphs 1-55.

1 57. The foregoing acts and omissions of Defendant constitute numerous
 2 and multiple knowing and/or willful violations of the TCPA, including but not
 3 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
 4 *seq.*

5 58. As a result of Defendant's knowing and/or willful violations of *47*
 6 *U.S.C. § 227 et seq.*, Plaintiff and the TCPA Class members are entitled an award
 7 of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
 8 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

9 59. Plaintiff and the TCPA Class members are also entitled to and seek
 10 injunctive relief prohibiting such conduct in the future.

11 **THIRD CAUSE OF ACTION**

12 **Violation of Unfair Business Practices Act**

13 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

14 60. Plaintiff incorporates by reference each allegation set forth above.

15 61. Actions for relief under the unfair competition law may be based on
 16 any business act or practice that is within the broad definition of the UCL. Such
 17 violations of the UCL occur as a result of unlawful, unfair or fraudulent business
 18 acts and practices. A plaintiff is required to provide evidence of a causal connection
 19 between a Defendant's business practices and the alleged harm--that is, evidence
 20 that the Defendant's conduct caused or was likely to cause substantial injury. It is
 21 insufficient for a plaintiff to show merely that the Defendant's conduct created a
 22 risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
 23 unfair competition covers any single act of misconduct, as well as ongoing
 24 misconduct.

25 **UNFAIR**

26 62. California Business & Professions Code § 17200 prohibits any "unfair
 27 ... business act or practice." Defendant's acts, omissions, misrepresentations, and
 28 practices as alleged herein also constitute "unfair" business acts and practices

1 within the meaning of the UCL in that its conduct is substantially injurious to
2 consumers, offends public policy, and is immoral, unethical, oppressive, and
3 unscrupulous as the gravity of the conduct outweighs any alleged benefits
4 attributable to such conduct. There were reasonably available alternatives to further
5 Defendant's legitimate business interests, other than the conduct described herein.
6 Plaintiff reserves the right to allege further conduct which constitutes other unfair
7 business acts or practices. Such conduct is ongoing and continues to this date.

8 63. In order to satisfy the "unfair" prong of the UCL, a consumer must
9 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing
10 benefits to consumers or competition; and, (3) is not one that consumers themselves
11 could reasonably have avoided.

12 64. Here, Defendant's conduct has caused and continues to cause
13 substantial injury to Plaintiff and members of the UCL Class. Plaintiff and
14 members of the UCL Class have suffered injury in fact due to Defendant's decision
15 to charge fees that were not owed. Thus, Defendant's conduct has caused
16 substantial injury to Plaintiff and the members of the UCL Class.

17 65. Moreover, Defendant's conduct as alleged herein solely benefits
18 Defendant while providing no benefit of any kind to any consumer. Such deception
19 utilized by Defendant convinced Plaintiff and members of the UCL Class to pay
20 fees that they did not owe. In fact, knowing that Plaintiff and other putative UCL
21 class members' did not owe these fees, Defendant unfairly profited, in that
22 Defendant knew that Plaintiff received nothing in return. Thus, the injury suffered
23 by Plaintiff and the members of the UCL Class is not outweighed by any
24 countervailing benefits to consumers.

25 66. Finally, the injury suffered by Plaintiff and members of the UCL Class
26 is not an injury that these consumers could reasonably have avoided. After
27 Defendant, falsely represented that Plaintiff and the UCL Class members owed
28 fees, these consumers suffered injury in fact due to Defendant's sale of UCL Class

1 Products to them. Defendants failed to take reasonable steps to inform Plaintiff and
2 UCL class members. As such, Defendants took advantage of Defendant's position
3 of perceived power in order to deceive Plaintiff and the UCL Class members to
4 take money from them. Therefore, the injury suffered by Plaintiff and members of
5 the UCL Class is not an injury which these consumers could not reasonably have
6 avoided.

7 67. Thus, Defendant's conduct has violated the "unfair" prong of
8 California Business & Professions Code § 17200.

9 FRAUDULENT

10 68. California Business & Professions Code § 17200 prohibits any
11 "fraudulent ... business act or practice." In order to prevail under the "fraudulent"
12 prong of the UCL, a consumer must allege that the fraudulent business practice was
13 likely to deceive members of the public.

14 69. The test for "fraud" as contemplated by California Business and
15 Professions Code § 17200 is whether the public is likely to be deceived. Unlike
16 common law fraud, a § 17200 violation can be established even if no one was
17 actually deceived, relied upon the fraudulent practice, or sustained any damage.

18 70. Here, not only were Plaintiff and the UCL Class members likely to be
19 deceived, but these consumers were actually deceived by Defendants. Such
20 deception is evidenced by the fact that Plaintiff and the UCL Class Members paid
21 the Defendant for the late fees. Plaintiff's reliance upon Defendant's deceptive
22 statements is reasonable due to the unequal bargaining powers of Defendant and
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1 Plaintiff. For the same reason, it is likely that Defendant's fraudulent business
2 practice would deceive other members of the public.

3 71. As explained above, Defendants deceived Plaintiff and other C UCL
4 lass Members.

5 72. Thus, Defendant's conduct has violated the "fraudulent" prong of
6 California Business & Professions Code § 17200.

7 **UNLAWFUL**

8 73. California Business and Professions Code Section 17200, et seq.
9 prohibits "any unlawful...business act or practice."

10 74. As explained above, Defendant deceived Plaintiff and other UCL
11 Class Members by charging them for fees that they did not owe.

12 75. Defendants used misrepresentations to induce Plaintiff and UCL
13 Class Members to pay fees that they did not owe. Had Defendants not falsely
14 misrepresented the fees, Plaintiff and UCL Class Members would not have paid
15 them. Defendant's conduct therefore caused and continues to cause economic
16 harm to Plaintiff and UCL Class Members.

17 76. These representations by Defendants are therefore an "unlawful"
18 business practice or act under Business and Professions Code Section 17200 *et*
19 *seq.*

20 77. Defendants has thus engaged in unlawful, unfair, and fraudulent
21 business acts entitling Plaintiff and UCL Class Members to judgment and
22 equitable relief against Defendants, as set forth in the Prayer for Relief.
23 Additionally, pursuant to Business and Professions Code section 17203,
24 Plaintiff and UCL Class Members seek an order requiring Defendants to
25 immediately cease such acts of unlawful, unfair, and fraudulent business
26 practices and requiring Defendants to correct its actions.

27 **PRAYER FOR RELIEF**
28

(Plaintiff and TCPA Class Members)

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

PRAYER FOR RELIEF

(Plaintiff and UCL Class Members)

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

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THRID CAUSE OF ACTION

Violation of Unfair Business Practices Act
(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)

- An order certifying the UCL Class and appointing Plaintiff as Representative of the Class;
- An order certifying the undersigned counsel as UCL Class Counsel;
- An order requiring Defendant, at its own cost, to notify all UCL Class Members of the unlawful and deceptive conduct herein;
- An order requiring Defendant to engage in corrective advertising regarding the conduct discussed above;
- Actual damages suffered by Plaintiff and UCL Class Members as applicable or full restitution of all funds acquired from Plaintiff and UCL Class Members from the sale of misbranded Class Products during the relevant class period;
- Punitive damages, as allowable, in an amount determined by the Court or jury;
- Any and all statutory enhanced damages;
- All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- Pre- and post-judgment interest; and

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- All other relief, general or special, legal and equitable, to which

1 Plaintiff and UCL Class Members may be justly entitled as deemed by
2 the Court.

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4 Respectfully Submitted this 30th day of October, 2015.

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6 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

7
8 By: /s/ Todd M. Friedman
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